

UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

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## JAMES KENNETH MCCALLUM.

v

**Plaintiff,**

Case No. 3:19-cv-00243-MMD-WGC

## ORDER

DR. NAUGHTON *et al.*,

## Defendants,

12        Pro Se Plaintiff James Kenneth McCallum, a state prisoner, submitted a civil rights  
13 complaint (“Complaint”) pursuant to 42 U.S.C. § 1983. On March 16, 2020, this Court  
14 issued an order denying Plaintiff’s application to proceed *in forma pauperis* because  
15 Plaintiff had “three strikes” pursuant to 28 U.S.C. § 1915(g). (ECF No. 3.) The Court  
16 informed Plaintiff that if he did not pay the \$400.00 filing fee in full within 30 days of the  
17 date of that order, the Court would dismiss the action without prejudice. (*Id.*) The 30-day  
18 period has now expired, and Plaintiff has not paid the full filing fee of \$400.00.

19 District courts have the inherent power to control their dockets and “[i]n the exercise  
20 of that power, they may impose sanctions including, where appropriate . . . dismissal” of a  
21 case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).  
22 A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an  
23 action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v.*  
24 *Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local  
25 rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for  
26 failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856  
27 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule  
28 requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal*

1 Service, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with  
2 court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming  
3 dismissal for lack of prosecution and failure to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey  
5 a court order, or failure to comply with local rules, the Court must consider several factors:  
6 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to  
7 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
8 disposition of cases on their merits; and (5) the availability of less drastic alternatives. See  
9 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;  
10 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

11 Here, the Court finds that the first two factors, the public's interest in expeditiously  
12 resolving this litigation and the Court's interest in managing the docket, weigh in favor of  
13 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
14 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
15 in filing a pleading ordered by the Court or prosecuting an action. See *Anderson v. Air*  
16 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring  
17 disposition of cases on their merits—is greatly outweighed by the factors in favor of  
18 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey the  
19 court's order will result in dismissal satisfies the “consideration of alternatives”  
20 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d  
21 at 1424. The Court's order requiring Plaintiff to pay the full filing fee within 30 days  
22 expressly stated: “It is further ordered that this action will be dismissed without prejudice  
23 unless Plaintiff pays the \$400.00 filing fee in full within 30 days of entry of this order.” (ECF  
24 No. 3 at 2.) Thus, Plaintiff had adequate warning that dismissal would result from his  
25 noncompliance with the Court's order to pay the full filing fee within 30 days.

26 It is therefore ordered that this action is dismissed without prejudice based on  
27 Plaintiff's failure to pay the \$400.00 filing fee in compliance with this Court's March 16,  
28 2020, order (ECF No. 3).

1 It is further ordered that the Clerk of Court will close the case and enter judgment  
2 accordingly.

3 DATED THIS 20<sup>th</sup> day of April 2020.

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6 MIRANDA M. DU  
7 CHIEF UNITED STATES DISTRICT JUDGE

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